***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

+WRIT PETITION No.18358 OF 1997

%Dated 04-04-2007

Between:

Barla Trinadha Rao

… Petitioner

AND

The Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Visakhapatnam & others.

… Respondents

! Counsel for Petitioner: Sri V. Sudhakar Reddy, Advocate

^Counsel for Respondents: None

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> HEAD NOTE:

? Cases referred

1. 2000 (2) LLN 405
2. 1999 (3) LLN 872

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ORDER:-

This writ petition is filed seeking quashing of the award dated 28.03.1997 of the Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short "the Labour Court") in I.D.No.138 of 1993 holding that the finding of the Labour Court that the petitioner is not entitled to reinstatement, as illegal and contrary to law laid down by the Supreme Court and various High Courts. The petitioner also sought for consequential direction to respondents 2 and 3 to reinstate him as Works Maistry with all consequential benefits including backwages.

In the affidavit filed in support of the writ petition, the petitioner submitted that he joined in service under respondents 2 and 3 on 01.03.1980 as Works Maistry on a salary of Rs.310/- per month and worked continuously as such till 31.07.1984, on which

date he was retrenched from service without giving any notice or making payment in lieu of notice and also without paying retrenchment compensation, as contemplated under Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act"). It is further stated that though the petitioner approached respondents 2 and 3 on several occasions with a request to take him back to duty, his efforts did not fructify, therefore he approached the 1st respondent by way of I.D.No.138 of 1993. The 1st respondent having held that the retrenchment of the petitioner was contrary to Section 25-F of the Act, however, erroneously declined to grant the relief of reinstatement into service and instead awarded compensation of Rs.1500/- in lieu of reinstatement. Therefore, the present writ petition is filed.

The Executive Engineer of Vamsadhara Project, Main Canal Division, Tekkali, 2nd respondent, filed a counter-affidavit in which he referred to the instructions issued by the Government of Andhra Pradesh, directing all the Heads of department not to recruit NMR workers in terms of G.O.Ms.No.143 dated 16.03.1984. He also referred to A.P. Ordinance No.8 of 1993 dated 25.11.1993 wherein regularization of the daily wage workers/NMRs was prohibited. It is also averred that as per the latest judgment of the Apex Court, the provisions of the ordinance are not applicable to Irrigation Department.

Heard Sri V. Sudhakar Reddy, learned counsel for the petitioner. None appears for the respondents.

The 1st respondent, Labour Court, framed the following two points for consideration:

1. Whether the petitioner was removed illegally?
2. To what relief is the petitioner entitled?

On point No. 1, the Labour Court, having considered the entire material on record, held that the petitioner was removed illegally by the respondents without following the provisions of Section 25-F of the Act.

On point No. 2, the 1st respondent discussed the evidence relating to the stage of execution of different works under Vamsadhara Project. In para 8, the 1st respondent observed as under:

> "Thus, it is to be seen that the construction of second stage of the project has not yet begun. About the construction of left canal still going on and opening of another division, MW1 does not state anything but it is elicited in the cross-examination by WW1 that he cannot say how much strength is there in each division of the project and whether there is excess staff. Thus the management is in the best position to assess the requirement of NMRs. Further, it is stated in the first rejoinder that the Government issued instructions to all the Heads of department not to recruit NMR workers in terms of G.O.Ms.No.143 dated 16.03.1984. For all these reasons I hold that the petitioner is not entitled to reinstatement."

Under Section 11-A of the Act, the Labour Court/Industrial Tribunal is conferred with the discretion in the matter of granting relief consequent on it's finding that the retrenchment/dismissal is bad. However, it is needless to emphasize that such discretion

has to be exercised properly and reasons have to be recorded therefor. The 1st respondent having held that the petitioner's retrenchment is in contravention of the provision of Section 25-F of the Act, declined to grant the relief of reinstatement mainly for three reasons viz., (i) that the Management is in the best position to assess the requirement of NMRs; (ii) that the Government issued instructions to all the Heads of department not to recruit NMR workers in terms of G.O.Ms.No.143 dated 16.03.1984; and (iii) that there was a delay of about nine years in the petitioner approaching the Labour Court questioning his termination.

As regards the first reason, I am of the view that the Labour Court was not justified in taking the management's stand as last word in assessing the requirement of work. From the evidence discussed by the Labour Court, it is clearly evident that the construction of second stage of Vamsadhara Project was not even commenced at the time of giving the evidence by the management witnesses. Even with respect to the stage of canal works, the management witnesses were evasive and this was taken note of by the Labour Court itself. It was therefore for the Labour Court to assess the need of the work rather than leaving it to the decision of the management. The Labour Court has thus totally overlooked the material available on record, which clearly shows that there was work with the second stage of the project, having not been commenced. From the material, therefore, I find that there was work, but in spite of the same, the petitioner was not ordered to be reinstated. It is significant to note that even in the counter-affidavit filed in the present writ petition there was no whisper that there

was no availability of work. The reasoning on the first ground was therefore not sustainable.

As regards the G.O.Ms.No.143 dated 16.03.1984, even assuming that the said G.O. related to recruitment of NMR workers, it has merely banned the fresh recruitment of NMRs. This would not have come in the way of Labour Court to grant the relief of reinstatement following the illegal retrenchment of a workman. With regard to delay of nine years, Sri Sudhakar Reddy placed before the Court the Judgment of Supreme Court in **GURUMAIL SINGH v PRINCIPAL, GOVERNMENT COLLEGE OF EDUCATION AND OTHERS**[1] wherein the Supreme Court held as under:

> "Having heard learned counsel for the parties we find that the Labour Court having held in case of the appellant whose services were terminated on September 30, 1981 that S.25-F of the Industrial Disputes Act was violated, was in error in dismissing the reference on the ground of delay as the termination was of 1981 and the dispute was raised in 1989. Similarly, the High Court in the impugned judgment committed the same error in confirming the said decision. The reason is obvious. As laid down by this Court in the case of *Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd., and another* (1999 (2) LLN 674), if the order of dismissal is challenged belatedly, the dispute would still continue for adjudication, the only question would be to deprive back-wages for the period of delay in raising such a dispute if on merits it is to succeed. Following the said decision, therefore, the appeal is allowed. The judgment and order of the High Court as well as the Labour Court are set aside. The termination of the appellant on September 30, 1981 is held to be bad and set aside. The appellant is ordered to be reinstated

in service as Junior Lecturer Assistant with continuity of service. But so far as the back-wages are concerned, he will not be entitled to any back-wages from September 30, 1981 till February 27, 1989 as he had not raised any dispute during that time. Thereafter from March 1, 1989 till the date of reinstatement of the appellant, on the facts and circumstances of the present case, the respondents are directed to pay 50 per cent of the back-wages towards full and final satisfaction of appellant's claim, regarding back-wages. This amount shall be calculated and paid to the appellant by the respondents within eight weeks from today. He shall be reinstated with continuity in service also within that time. The appeal is allowed to the aforesaid extent with no order as to costs."

In **MAHAVIR SINGH v UTTAR PRADESH STATE ELECTRICITY BOARD AND OTHERS**[2] a similar view was taken by the Supreme Court holding that once the termination is held to be illegal, reference could not have been rejected. The Supreme Court, however, held in both the cases that the factor of delay can be taken into consideration in deciding the quantum of back-wages. In both the cases, the Supreme Court confined the back-wages to 50% of the entitlement of the workman.

Having considered the aforementioned judgments, I am of the view that the 1st respondent – Industrial Tribunal-cum-Labour Court was wrong in denying the relief of reinstatement to the petitioner. The award to this extent is therefore liable to be set aside and the petitioner is entitled to reinstatement.

The further question for consideration is whether the petitioner is entitled to back-wages and if so, to what extent. As held by the Supreme Court, the delay in approaching the Labour

Court is a relevant factor for considering the quantum of back-wages. As the petitioner failed to invoke the statutory remedy available to him under Section 2-A of the Act for 9 years, he is not entitled to backwages for this period.

Having regard to the facts and circumstances of the case, I feel that the interest of justice would be met if 25% of the back-wages is awarded to the petitioner from the date of reference of the I.D. to the Labour Court, till his reinstatement. The respondents are directed to reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed to the extent indicated above. No costs.

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C.V. NAGARJUNA REDDY, J

Date: 04.04.2007
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Note:- Issue CC in one week.
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LR copy to be marked.

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[1] 2000 (2) LLN 405

[2] 1999 (3) LLN 872